

§ 2610.107 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at reduced rate to the applicant.

(b) Except as provided in § 2610.108, no award for the fee of an attorney or agent under these rules may exceed \$125.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Office pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agency, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of applicant's case.

[57 FR 33268, July 28, 1992, as amended at 63 FR 13116, Mar. 18, 1998]

§ 2610.108 Rulemaking on maximum rate for attorney and agent fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availabil-

ity of attorneys or agents qualified to handle certain types of proceedings), the Office may adopt regulations providing that attorney or agent fees may be awarded at a rate higher than \$125.00 per hour in some or all of the types of proceedings covered by this part. The Office will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. 553.

(b) Any person may file with the Office a petition for rulemaking to increase the maximum rate for attorney or agent fees as provided in 5 U.S.C. 504(b)(1)(A)(ii). The petition should identify the rate the petitioner believes the Office should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The Office will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

[57 FR 33268, July 28, 1992, as amended at 63 FR 13116, Mar. 18, 1998]

§ 2610.109 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Office of Government Ethics and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

Subpart B—Information Required From Applicants**§ 2610.201 Contents of application.**

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. Unless the applicant is an individual, the application shall further state the number of employees of the applicant and describe briefly the type and purpose of its organization or business. The application shall also: